Judikáty vztahující se k aplikaci Vídeňské úmluvy

1. JUDIKÁTY ŘEŠÍCÍ, ZDA-LI SE JEDNÁ O KUPNÍ SMLOUVU SPADAJÍCÍ POD ROZSAH VÍDEŇSKÉ ÚMLUVY

Date: 28.5. 2001
Country: Germany
Number: 16 u 1/01
Court: Oberlandesgericht Köln
Parties: Unknown

An Italian seller delivered from 1995 until 1998 clothing and other accessories for motorcyclists to a German buyer. The contract between the parties consisted of an ongoing correspondence over a few months in 1995. The Italian seller sent a draft agreement to the buyer containing the conditions for future co-operation, according to which the buyer was to act as sole distributor for the seller in Germany, the buyer would buy the textile goods and sell them for a price determined by the buyer itself. A part of the goods were to be sold on the seller's account in return for a commission paid to the buyer. After additional correspondence the parties agreed on a contract, which was finally drafted by the seller and sent to the buyer. Though the parties never signed the contract, the deliveries continued until the seller in 1998 gave notice to terminate the contract.

The plaintiff in the case, a successor to the Italian seller, claimed payment of the purchase price with interest for three deliveries of leather clothing. The buyer argued for a dismissal of the case on the grounds that it had received the goods on commission, which was in fact mentioned in several places of the contract. The buyer also filed counter claims for the payment of an agreed compensation and a lost commission deriving from seller's deliveries of leather clothing to another German company during the time of notice??.

The Court established that the parties had implicitly agreed that German law and as such CISG would be applicable to the contract as they had not challenged that in the proceedings before the lower Court.

The Court then concluded that the buyer had to pay the purchase price as claimed by plaintiff according to Art 53 CISG.

In reaching its conclusion the Court first addressed the buyer's argument for a dismissal of the case and stated that the decisive element in defining whether the buyer had received the goods on commission was not how the purchase was characterised in the contract, nor the fact that a commission should be paid to the buyer under the terms of the agreement, but it should be determined instead by the contents of that contract. In particular, the court took into consideration on whose account the goods were sold and if the payments were to be settled in connection with the sales. In the case at hand, according to the Court, the buyer had not received the goods on commission as it distributed the goods on its own account. Furthermore there was no agreement on settling the accounts between the parties which had also happened only once in the long-term business relationship. The contract was therefore a contract for the sale of goods between the parties governed by CISG (Art. 1(1) CISG).

The Court then found that both counterclaims filed by the buyer were **outside the sphere of applicability of CISG as they were not claims deriving from a contract for the sale of goods (Arts. 1 and 4 CISG).** The court applied German law with regards to the counterclaims and decided against the buyer on these matters.

Finally the court stated that the plaintiff was entitled to interest on its claim according to Art. 78 CISG.

Date: 10.11. 2005
Country: Poland
Numer: V CK 293/05
Court: Supreme Court of Poland
Parties: A. A. S.R.L. (Italy) vs. J. D. (Poland)

(Abstract prepared by Dr. Mateusz J. Pilich, Supreme Court of the Republic of Poland)

An Italian producer of office furniture brought an action against the Polish buyer for payment of a certain sum. It claimed that several invoices were issued in year 2000 and 2001 in connection with a contract for the sale of furniture delivered to Poland and handed over to the buyer. The invoices were signed only by the seller and the buyer denied the very fact that it entered into any contract with the former.

The Regional Court (Sad Rejonowy) in Wroclaw dismissed the claim. It applied Polish domestic law to the merits of the dispute. The court ruled that the claimant had not produced any evidence of a contract concluded between the parties. Its allegations alone could not suffice. Moreover, the invoices which were not accepted by the defendant did not constitute evidence of the contract.

The seller's appeal was dismissed by the District Court (Sad Okregowy). While it was true, according to the Court of the second instance, that the CISG should have been applied instead of the Polish Civil Code, the decision on the facts could not be overturned and as a result, the conclusion of the challenged judgment was correct.

The seller appealed to the Supreme Court alleging, among other things, the plea of violation of Art. 4 (a) and Art. 7 (2) CISG as well as misapplication of Art. 27 (1)(1) Polish Act on PIL and as a consequence, misapplication of Art. 6 of Polish Civil Code (the rule regulating the burden of proof). In the seller's opinion, under CISG the invoices signed by the seller are sufficient evidence of a contract for sale and the defendant had in fact paid some part of the contested debt, which was to be considered as an implied consent.

The Supreme Court dismissed the seller's claim. It held that according to precedents of the same Court, **the invoices as such could not be considered a source of private law obligations and in particular of a contract for the sale of goods.** Moreover, the parties were in an ongoing business relationship in various fields, like advertisement services, and the sum paid by the defendant was in fact connected with services other than the delivery of furniture. Finally, the **Supreme Court observed that whereas CISG contains no express definition of a sales contract, the obligations arising from an international contract as the one regulated by CISG correspond to the model provided for in the Polish Civil Code: the seller promises to deliver goods and to transfer the title thereof to the buyer, and the buyer obliges itself to take delivery and to pay the price** (Arts. 30 and 53 CISG). There was no evidence of an agreement concerning such obligations in the case at hand.

2. JUDIKÁT ŘEŠÍCÍ, ZDA-LI SE JEDNÁ O MÍSTA PODNIKÁNÍ V RŮZNÝCH STÁTECH

Date: 28.2. 2000
Country: Germany
Numer: 5 U 118/99
Court: Oberlandesgericht Stuttgart, 5. Zivilsenat
Parties: unknown

From 1990 to 1996 a German company delivered flooring to a Spanish buyer. A dispute arose regarding payment of some deliveries. The German company sued the buyer in Germany, requesting payment. The buyer argued that as D, a stock corporation under Spanish law, had been involved in the contractual negotiations, D was to be considered the real contracting party and that therefore German courts had no jurisdiction. The German company countered that D had been a mere commercial agent without any authority to conclude a contract. The Court of first instance (Landgericht Heilbronn 31.05.1999) accepted the buyer's contention and denied its jurisdiction. The German company appealed.

The Court held that CISG was applicable to the dispute under its Art. 1(1)(a). Interpreting the parties' statements and conduct pursuant to Art. 8(1) and (3) CISG and considering inter alia that material terms of the contracts (e.g. the price) had been negotiated directly between the German company and the buyer, the Court held that the German company was the selling party. As regards some deliveries, the contract was concluded through the German seller's confirmation of the order placed by the buyer. As regards other deliveries, the seller made an offer under Art. 14(1) CISG by delivering the goods and invoices and the buyer tacitly accepted such an offer by taking delivery of

the goods. Thus, according to Arts. 5(1) of the EC Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters (1968 Brussels Convention) and 57(1)(a) CISG, the Court affirmed its jurisdiction.

Furthermore, the Court discussed whether D could represent a seller's place of business with the closest relationship to the contract under Art. 10(a) CISG. **The Court defined the place of business as the place where the business is actually and chiefly run, which requires stability as well as a certain independent sphere of authority.** The Court found it doubtful whether D, lacking any authority to conclude contracts on behalf of the German company, would fulfil such requirements. The question was anyway left open, since the German company obviously had a closer relationship to the contract in view of its control over it.

3. JUDIKÁT ŘEŠÍCÍ ÚZEMNÍ ROZSAH ÚMLUVY – PŘÍPAD, KDY STRANY SMLOUVY MAJÍ MÍSTA PODNIKÁNÍ VE SMLUVNÍCH STÁTECH VÚ

Date: 1.2. 2007
Country: Arbitral Award
Numer: --
Court: International Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation
Parties: unknown

An Estonian company (seller), entered into a contract with a Kazakhstani company (buyer), for the purchase of certain goods.
When the buyer delivered only part of the goods, the seller claimed damages for breach of contract and since it had paid in advance the full price of the goods, it claimed restitution of the sum corresponding to the price of the undelivered goods.

The contract provided that Russian law was the law governing the contract but since **both parties had their places of business in States parties to the Vienna Sales Convention (CISG) the Arbitral Tribunal applied CISG.**

As to the merits the Arbitral Tribunal decided in favor of seller. In so doing it referred to Art. 81 CISG stating that this provision expressed the universally established approach in dealing with situations such as that of the case in hand. In addition the Arbitral Tribunal pointed out that this approach was also confirmed in Arts. 7.2.1, 7.2.2 and 1.3 of the UNIDROIT Principles of International Commercial Contracts.

4. JUDIKÁT ŘEŠÍCÍ ÚZEMNÍ ROZSAH ÚMLUVY – PŘÍPAD, KDY NA SMLUVNÍ STÁT VÚ ODKÁŽÍ PRAVIDLA MEZINÁRODNÍHO PRÁVA SOUKROMÉHO

Date: 27.4. 1999
Country: Netherland
Numer: rolnrs. 97/700 and 98/046
Court: Hof Arnhem
Parties: G. Mainzer Raumzellen v. Van Keulen Mobielbouw Nijverdal BV

A Dutch seller and a German buyer were in a longstanding business relationship dating from the Seventies. In this framework the seller produced movable room-units upon order of the buyer, who either sold or rented them. According to the parties' agreement, the buyer was the sole and exclusive agent for the seller and had the exclusive right to sell the goods within all German speaking countries. A dispute arose between the parties when the buyer refused payment of some invoices alleging lack of conformity of the delivered goods. The buyer commenced an action claiming both that the goods had a structural defect and that the seller had breached their agreement concerning the buyer's exclusive right to distribution.

The Court confirmed the first instance decision on the question of the applicability of CISG. **CISG was applicable either according to its Art. 1(1)(b) as the private international law rules lead to the application of the law of the Netherlands, a contracting State,** or since 1993 as part of Dutch law which was the law chosen by the parties through inclusion in the contract of the seller's standard terms. Claims referring to deliveries made before entry into force of CISG were to

be settled according to the 1964 Hague Convention relating to a Uniform Law on the International Sale of Goods (ULIS).

The Court ruled that though the contract contained elements of both work and sales contracts, it had to be considered as a sale under CISG (Art. 3 CISG). CISG was not applicable, however, to the question of breach of the buyer's right to exclusive distribution, which was solved according to the governing domestic law (Dutch law).

The Court held that the buyer had lost the right to rely on a structural defect of the goods since it had not examined the goods as soon as practicable under the circumstances (Art. 38(1) CISG). Already in 1990 did the buyer receive complaints from its own customers concerning the quality of the room units. Therefore it should have immediately examined the goods and discovered the structural defects, while it waited six years before doing so, after being confronted with a major damage caused by one of the delivered products.

As to other defects of the goods claimed by the buyer, the Court held that the buyer did not examine the goods and give notice of the lack of conformity within the time prescribed in Arts. 38 and 39 CISG and in any case did not observe the maximum time of two years from delivery requested by Art. 39(2) CISG.

The Court also denied the buyer's argument that the seller had not produced the movable room-units in accordance with the Industrial Standards applicable in the buyer's country for the industry concerned, though the seller knew that the goods had to be exported inter alia to Germany. The Court stated that in the case at hand it would have been up to the buyer to inform the seller that the production of the movable room-units had to fulfil specific German Industrial Standards.